



OLD VALUES - NEW HORIZONS  
**COMMUNITY DEVELOPMENT**  
PO Box 120, Windham, New Hampshire 03087  
(603) 432-3806 / Fax (603) 432-7362  
[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

**Approved Minutes Zoning Board of Adjustment**  
**March 22, 2016**  
**7:30pm @ Community Development Department**

Mark Samsel	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Excused
Pam Skinner	Secretary	Present	Jim Tierney	Alternate	Excused
Mike Scholz	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Present			

**Staff:**

Dick Gregory, ZBA Code Enforcement Administrator  
Suzanne Whiteford, Minute Taker

**Meeting called to order at 7:30 by Chairman Scholz**

**Election of Officers:**

**Mr. Partington nominated Mr. Samsel to position of Chairman**

**Second by Mr. Breton**

**Vote 5-0-0**

**Mr. Breton nominated Mr. Partington to position of Vice Chairman**

**Second by Ms. Skinner**

**Vote 5-0-0**

**Mr. Breton nominated Ms. Skinner to position of secretary**

**Second by Mr. Partington**

**Vote 4-0-1 Ms. Skinner abstained**

Case #6-2016 and list of abutters read into the record per Ms. Skinner

**Lot 25-F-105, Case #6-2016**

**Applicant/Owner -Michelle A. Webster, Trustee of Webster Family Revocable Trust**

**Location – 33 Abbot Road**

**Zoning District** -Residence A and Cobbetts Pond & Canobie Lake Watershed Protection District  
Variance relief is requested from **Section 406.2** to expand the volume from 7,168 cu. Ft. to 12,216 cu. Ft. to allow the construction of a second floor loft and enclosing an existing deck.

Michelle Webster applicant 6 Vista Drive, Pelham NH 03076 reviewed her request for variance relief from Section 406.2 for 33 Abbott Rd. Windham NH. Ms. Webster reviewed the 5 variance criteria

Chairman Samsel asked Ms. Webster to talk more about variance criteria #5,

Mr. Mazalewski asked Ms. Webster if the existing cottage has plumbing.

Ms. Webster replied yes the existing cottage has plumbing.

Mr. Mazalewski asked Ms. Webster if the plumbing in the cottage is tied into the septic system.

Ms. Webster replied no.

Mr. Scholz asked if the cottage was included in the footprint calculations.

Mr. Gregory replied the cottage is used for storage and doesn't affect living space; therefore the cottage is not in the calculation.

Mr. Scholz asked about the location of the den shown on the plan.

Ms. Webster explained the den used to be a bedroom; now the area is open.

Ms. Webster replied stated she has a 2-bedroom septic system and the den can be turned back into a bedroom at any time. The separate cottage is not living space it is used as storage not living space.

Mr. Mazalewski asked Ms. Webster if the deck being changed into a 3 season room has an existing foundation.

Ms. Webster replied no, the deck does not have an existing foundation. Ms. Webster stated she intends to enclose the deck with walls and a roof, and a better support system. Ms. Webster stated the conversion of the deck to a 3 season room will not change in footprint.

Mr. Mazalewski asked the Ms. Webster how far from the deck is from the side lot line.

Ms. Webster replied she does not know the distance of the deck from the side lot line.

Ms. Mazalewski asked Ms. Webster if she had a survey.

Ms. Webster replied she did not have a survey.

Mr. Breton asked Ms. Webster if she intends to replace the existing deck.

Ms. Webster responded no, the deck is not being removed.

Mr. Breton stated the old septic is shown under the deck and is required to be filled in; how will she fill in the septic tank without removing the deck?

Ms. Webster responded the deck was not taken apart to fill in the old septic tank; she does not know how the fill in was completed with the deck in place.

Chairman Samsel stated the septic tank under the deck is just a dry well.

Mr. Mazalewski stated that Shoreland considers a deck pervious. Mr. Mazalewski asked Chairman Samsel if adding a roof makes it impervious.

Mr. Gregory replied decks are considered impervious with or without a roof.

Mr. Breton stated there are 2 existing decks on the plan and confirmed with Ms. Webster that one is going to be changed into a room.

Greg Farria, Pingwood Drive, Pelham is a friend of Ms. Webster's who spoke in support of the proposed plan. Mr. Farria stated the additional square footage includes the conversion of the deck to a 3 season room. Mr. Farria stated additional care has been taken regarding water flow towards Rock Pond; no additional water will flow into Rock Pond as a result of the plan.

**Motion by Mr. Partington for the Board to go into deliberation**

**Second by Mr. Scholz**

**Vote 5-0-0**

**Motion carries**

Mr. Scholz stated the fact that the cottage is being converted to a workshop is betterment. Mr. Scholz stated he is not inclined to grant this as a one bedroom.

Ms. Skinner read a letter from Conservation Commission stating the plan was reviewed and they had no concerns.

Mr. Partington reviewed the 5 variance criteria. Mr. Partington stated he believes the Board should condition approval that the cottage will not be used as living space.

Chairman Samsel concurs with the Board's comments.

**A motion was made by Mr. Scholz to grant variance relief for Case #6-2016 Lot 25-F-105, 33 Abbott Rd. located in Residence A and Cobbetts Pond & Canobie Lake Watershed Protection District from Section 406.2 to expand the volume from 7,168 cu. Ft. to 12,216 cu. Ft. to allow the construction of a second floor and enclosing an existing deck conditioned on the existing cottage will no longer be used for living space**

**Second by Mr. Breton**

**Vote 5-0-0**

**Motion carries**

**Chairman Samsel advised the applicant there is a 30-day appeal period.**

Ms. Skinner read Case #7-2016, abutter list into the record.

**Lot 11-A-520 & 530 – Case #7-2016**

**Applicant -Karl Dubay**

**Owner – Village Center Properties, LLC**

**Location – 13 & 15 Indian Rock Rd.**

**Zoning District- Village Center District and Wetland & Watershed Protection District (WWPD)**

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow development in the WWPD.

**Section 601.3** to allow the construction of the two (2) buildings in the WWPD.

**Section 601.4.6** to allow a waste disposal system to be within 100 ft. from the WWPD.

Applicant Mr. Dubay introduced land owner and developer Mr. Chris McCarthy, 17 Nottingham Rd, Windham. Mr. McCarthy reviewed the plan for developing Lot 11-A-520 & 530

Mr. Dubay reviewed the proposed plan for Case #7-2016.

Chairman Samsel asked the applicant what the distance was from the WWPD to the road.

Mr. Dubay replied the distance varies from 100 to 250 feet from the road. Mr. Dubay showed Chairman Samsel the location of the WWPD on the proposed plan.

Chairman Samsel asked about the remediation; Chairman Samsel stated he can see where it ends and where it connects, and asked Mr. Dubay if the pipe will be under the building.

Mr. Dubay replied no, the pipe won't be under the building.

Mr. Scholz asked the applicant to speak about the section of wetland shown on section E of the plan.

Mr. Dubay responded he is not proposing to do anything with the wetland shown on Section E of the plan.

Mr. Scholz asked Mr. Dubay to speak to his plans for the existing log cabin on the property.

Mr. Dubay responded he intends to leave the log cabin on the lot and he would like to do something to improve and preserve the log cabin in some future phase.

Mr. Scholz asked about the existing septic system being pumped up to the property.

Mr. Dubay responded the existing septic system is collecting and pumping away from the WWPD.

Chairman Samsel asked Mr. Gregory and Mr. Dubay about, what appears to be, strike outs on the variance application.

Mr. Dubay replied there are not any intended strikeouts on the variance application. Mr. Dubay stated he tried to type on the Town's pre-lined paper and had difficulty fitting the font on the existing lines.

Mr. Dubay reviewed the 5 variance criteria for Case #7-2016.

Chairman Samsel asked Mr. Dubay if the neighbor east of the wall shown on the plan next to the parking lot will be affected by the lights.

Mr. Dubay replied the lights will not affect the neighbor east of the wall shown on the plan.

Mr. Scholz asked Mr. Dubay how he plans to connect to the adjacent development.

Mr. Dubay replied there are not any sidewalks on 111, it is a busy road. Mr. Dubay described his plan for sidewalk connectivity within the development. Mr. Dubay explained a plan for future crosswalk connectivity will be ready for activation if and when it is needed. Mr. Dubay stated he does not want to show the connecting crosswalk in the event an abutter doesn't want a walkway connection.

Mr. Scholz asked Mr. Dubay if he took into account the water that drains from the large slope on the property and its impact on the watershed.

Mr. Dubay reviewed and described the watershed areas on the plan. Mr. Dubay pointed out on the plan the watershed on the property. Mr. Dubay described water flow is coming down transverse on the slope shown on the plan. Mr. Dubay explained the grading plan will intercept the clean water with slopes and piping and direct the water into the state system which is where the water goes now. Mr. Dubay stated the drainage is integrated and separated and the owner is spending extra money to get the watershed draining into the ground.

Mr. Partington stated the proposed plan looks like everything else on 111, there is no mixed use, and it's commercial. Mr. Partington stated the proposed plan looks identical to Convenient MD; he is not seeing any walkways or a mixed use district.

Mr. Dubay replied the front section would be commercial and small retail, and would transition to softer commercial in the middle, then into residential toward the back of the plan. Mr. Dubay stated he is working with the topography which prevents development of a large box building. Mr. Dubay stated it is the perfect location for little shops.

Chairman Samsel asked Mr. Dubay to point out the entry ways on the plan and asked if they are going up

Mr. Dubay replied yes, the entry ways go up and pointed them out on the plan.

Mr. McCarthy, the owner/applicant stated the spirit and intent of the plan is to have walk ability and mixed use. Mr. McCarthy stated he is in discussion with the abutter about landscaping. Mr. McCarthy explained initial planning is with the town's architect to develop something unique. Mr. McCarthy explained he is trying to use the topography to his advantage and have the parking lots in the back. Mr. McCarthy stated the sidewalk connectivity is forthcoming.

Susan Hou, 4 Eastwood Rd. spoke in opposition of the plan. Ms. Hou stated she likes the neighborhood being rural; she does not like the plan for commercial development. Ms. Hou had concerns about the interruption of wildlife due to clear cutting, water source, and water and septic drainage plans. Ms. Hou stated she is concerned about the effect of blasting to her property and residence.

Frank McNelly, 18 Hardwood Rd. spoke in opposition of the plan. Mr. McNelly's view will change from rural to a parking lot with the proposed development and asked if the parking lot could be located to the front of the property facing the road. Mr. McNelly is concerned about the impact on wild life from the clear cutting. Mr. McNelly is concerned about the potential for washouts as a result of clear cutting.

Mr. Dubay pulled up the GIS mapping and pointed out the relationship of the plan to the homes of the people that spoke in opposition of the plan. Mr. Dubay showed there is 1500 feet in distance between the residents and the development and a 50 foot buffer on the back side of the development. Mr. Dubay explained he plans to use the existing well on the property and put in a new well for the small building; the water use will be equivalent of three homes of use. Mr. Dubay stated he designed the plan to reduce the amount of blasting. Mr. Dubay stated the request is for WWPV variance and the plan meets all the criteria of the ordinance.

Chairman Samsel stated the district was approved by the town in 1998; the property is zoned for the use proposed by the applicant and zoned for this purpose.

Mr. Breton stated the question is can he (Mr. Dubay) develop in the WWP. Mr. Breton stated the house that was removed had a little parking lot with 4 cars; abutters are trying to grasp the proposed parking lot which is bigger than the building.

Mr. Dubay replied the proposed parking lot is an allowed and approved use.

Mr. Scholz asked Mr. Dubay how he calculated the required minimum number of parking spaces. Mr. Dubay replied he is using the town's calculation to determine the parking spaces and meets the town requirements.

Mr. McNally stated an approved use in the 1990's doesn't mean it is a good idea today. Chairman Samsel stated the Board is here solely to make a decision about the requests brought before them which is relief from the sections listed on the application.

Mr. Partington stated the village center district is the law that the towns people set and the Board doesn't get to overrule the towns' decision.

Mr. Breton directed the public to find the blasting ordinance on the town web site.

**Motion by Mr. Scholz to go into deliberation**

**Second by Ms. Skinner**

**Vote 5-0-0**

**Motion carries.**

Ms. Skinner read a letter dated March 11, 2016 from Edward Gallagher, WEDC Chairman, in support of the variance application for Case #7-2016.

Ms. Skinner read a letter from Conservation Commission in support of the variance application.

Mr. Scholz stated that the ZBA is only considering the variance request before the Board, not what may come in the future.

Mr. Partington reviewed the 5 variance criteria and believes the application meets all 5 criteria.

Mr. Breton stated the applicant showed he can gain relief from **Sections 601.3 and Section 601.4.6.**

Chairman Samsel agreed with Mr. Partington and Mr. Breton. Chairman Samsel believes the application meets the 5 variance criteria. Chairman Samsel stated he appreciates hearing from the WEDC committee regarding the proposal.

**A motion was made by Mr. Scholz to grant variance relief for Case #7-2016 Lot 11-A-520 & 530, 13 & 15 Indian Rock Rd. located in the Village Center District and Wetland & Watershed Protection District (WWPD) from Section 601.3 and Section 601.4.6 of the Town**

**of Windham Zoning Ordinance and Land Use Regulations to allow development in the WWPD as presented.**

**Second by Mr. Partington**

Chairman Samsel stated the purpose of the Board is to address relief from the requested sections of the town ordinance brought before them tonight.

**Vote 5-0-0**

**Motion carries**

**Chairman Samsel advised the applicant there is a 30 day appeal period.**

9:35 Short recess

9:43 meeting resumed

Ms. Skinner read Case #4-2013, abutter list, and letter of authorization into the record.

**Lot 21-G-600, Case #4-2013 Renewal Request**

**Applicant/Owner** – Janet & Stanley Balise

**Location** – Simpson/Range Rd.

Attorney Diane M. Gorrow representing Janet and Stanley Balise reviewed the history of the property variance requests and RSA 674:33, I-a. Attorney Gorrow reviewed the agreement and release signed on 3/18/2014 and entered it into the record as Exhibit A. Attorney Gorrow reviewed the good cause standard and how it applies to the applicant/owners case. Attorney Gorrow is requesting the ZBA extend the variance request as submitted in the variance renewal application, entered as Exhibit B.

Mr. Partington asked Ms. Gorrow what if the court rules against the case. Ms. Gorrow stated the applicant/owner will not be able to exercise the variance because they will not be allowed to access the property.

Attorney Steve Clark representing Jon Carpenter and Brad Belise spoke about the initial threshold question. Attorney Clark stated assuming the applicant produces evidence of good cause; the question is what good cause is. Attorney Clark stated the ZBA will not find guidance from the legislature on determining good cause. Attorney Clark believes the timing of the filing for the variance was untimely as it was 13 days before the deadline.

Chairman Samsel asked Attorney Clark if he was suggesting they should have filed with the court earlier than the 13 days before the expiration.

Attorney Clark responded yes.

Chairman Samsel asked Attorney Clark if he is disputing there was an obstruction going back to the original variance decision.

Attorney Clark stated he can't respond to that question. Attorney Clark stated where the obstruction is and where the access is an issue.

Attorney Gorrow responded she did not address the legislature for good cause. Attorney Gorrow reviewed the legislative history regarding good cause. Attorney Gorrow spoke to the cause for the delays in this case. Attorney Gorrow explained she believes the applicants meets the good cause

standard because they have not been able to implement the variance. Attorney Gorrow explained the applicants did not file sooner because of the nature of the lawsuit, they are suing their son, and no one wants to do that.

Attorney Clark asked the board to consider the timing of the filing and when they knew about the obstruction. Attorney Clark stated that the original variance was for lack of frontage, it had nothing to do with access. Attorney Clark stated there hasn't been a right of access since 1962; there are other options the lot has but the applicants want to take the path of least resistance.

Chairman Samsel asked where do they (the applicants) go from here  
Attorney Clark stated there is not a physical building permit issued from the building inspector.

Attorney Gorrow commented she did not say there isn't another way.

Brad Balise, 32 Range Rd. spoke in opposition of the applicant's good cause.

**Motion by Mr. Breton to go into deliberation**

**Second by Mr. Scholz**

**Vote 5-0-0**

**Motion carries**

Mr. Scholz stated there is an existing variance and he does not see there would be harm to anyone if the extension is granted. Based on the RSA the ZBA has been granted the right to grant good cause and grant a renewal and it meets the criteria of good cause.

Mr. Partington stated he remembers talking about access and the easement for hours at the last hearing and there was a determination made in 2013 that there was access. Mr. Partington stated he does not believe there is an issue with timely filing and regardless of what the ZBA thinks the court makes the final ruling.

Mr. Scholz stated he believes there is good cause. Mr. Scholz stated there is no harm granting the extension, there is a variance on record and they have to go through the court to exercise the variance.

Mr. Breton asked what good cause is.

Mr. Scholz stated a civil court case has been filed, the court has pushed the hearing out to June; it seems reasonable to grant the extension so the variance doesn't have to be started over from the beginning.

Mr. Breton states the document states there was a building permit issued.

Mr. Gregory states a building permit was not issued; the town agreed to issue a building permit but it was not issued.



Chairman Samsel stated the majority believed there was access and commented that if the access was challenged it will go to court. Chairman Samsel stated to go to court on the good cause issue is very compelling for good cause; we know how the court system is, the fact that it is in court right now shows good cause. The ZBA did their job and granted a variance. The timing, the concern it could happen every two years, and the board will go through the same arguments, yes it could be forever, and it eventually could be in Washington, it has to end sometime. The appeal history is not too strong, that access is where it should be and that is in the court system. Do we consider this an extension of the original variance of a separate variance?

Mr. Scholz is fine with extending the variance two years. He is not comfortable tying it to a court case, the extension should be granted to date certain.

Mr. Breton asked why not tie into the course case; the court case ultimately decides the variance.

Mr. Scholz and Mr. Partington do not know how it would be tracked and kept up with.

Mr. Breton suggested tabling the renewal.

Mr. Scholz stated if the variance expires the ZBA will not be able to extend it.

Chairman Samsel stated this appears to be the first situation like this before the Board, and the Board's decision could be a case study. Chairman Samsel stated the reason for good cause is relative to the trial date, when it is heard is when the clock starts. The basis of the board's decision is based on the trial.

Mr. Scholz stated there is no harm in granting the variance for 24 months from the 26<sup>th</sup>. There is good cause based on the fact that a civil court case is filed.

Chairman Samsel agrees with Mr. Scholz.

### **Motion by Mr. Scholz to grant a two year extension on the variance until 3/26/2016**

#### **Second by Mr. Partington**

Mr. Partington stated if the determination is that the access is allowed and they have been blocked for three years they can exercise the variance; through no fault of their own they have not been able to exercise their variance.

Mr. Breton stated the courts will decide the access issue.

#### **Vote 3-2-0 Mr. Breton and Ms. Skinner opposed**

#### **Motion carries**

**Chairman Samsel informed the Board there is a 30 day appeal period.**

John Carpenter, Range Road stated the access discussion was not during the variance phase.

### **ZBA Application Forms, Review and Approval**

Board suggested to add 'Application Fee + Legal Ad + per abutter' to the bottom of all the forms

Change 'renewal' to 'extension' on the ZBA variance and administrative variance forms.  
No other changes

Pam Skinner excused  
Mr. Mazalewski seated for Ms. Skinner

ZBA draft minutes for 11/10/2015, 1/12/2015, and 3/22/2016 were not discussed.

The ZBA minutes for 1/26/2016, 2/9/2016, and 2/23/2016 were approved as amended.

ZBA draft minutes for 3/8/2016 were reviewed and amended; the amended minutes will be reviewed again on 4/6/2016.

**Motion by Mr. Partington to adjourn**  
**Second by Mr. Mazalewski**  
**Vote 5-0-0**  
**Meeting adjourned at 11:28pm**

Revised by Dick Gregory, ZBA / Code Enforcement Administrator